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6 *Attorney for Plaintiff*

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 GATEWAY INSURANCE COMPANY, a
11 Missouri corporation,

12 Plaintiff,

13 vs.

14 ALEXANDER FERNANDEZ-LEON, an
individual; YENDRY HERNANDEZ-
15 ECHEVARRIA, an individual; GRETSIN
CONSUEGRA SORIANO, an individual;
16 JUAN SCHUEG-CASTRO, an individual;
JOSE PRIETO-HERNANDEZ, an individual;
17 NELLIS CAB LLC, OPERATION SERIES
NELLIS CAB LLC, VEH. SERIES 102, a
18 Nevada series limited liability company,

19 Defendants.

Case No.: 2:19-cv-00771-APG-BNW

**JOINT MOTION TO DISMISS CASE
WITHOUT PREJUDICE PURSUANT
TO FRCP 41(a)(2)**

20 Plaintiff Gateway Insurance Company ("Plaintiff") by and through its counsel of record,
21 Scott A. Flinders and Todd W. Prall of the law firm Hutchison & Steffen, PLLC, and
22 Defendants Yendry Hernandez-Echevarria, Gretsin Consuegra Soriano, Juan Schueg-Castro,
23 and Jose Prieto-Hernandez ("Defendants"), by and through their counsel, Joseph A. Gutierrez
24 and Stephen G. Clough of Maier Gutierrez and Associates jointly move the Court for an order
25 dismissing this case without prejudice pursuant to FRCP 41(a)(2).

26 Plaintiff and Defendants would submit a stipulation to dismiss without prejudice
27 pursuant to FRCP 41(a)(1), but the attorney of record for Nellis Cab, LLC, another defendant in
28 this case, has informed Plaintiff and Defendants that he is no longer authorized to represent

1 Nellis Cab, LLC. No counsel has been located who has been authorized to appear in this action
2 on behalf of Nellis Cab, LLC. Nellis Cab, LLC is, however, represented by new counsel in the
3 underlying state court action and dismissal of this case without prejudice will not affect or
4 hinder Nellis Cab, LLC's ability to defend the underlying action.

5 Plaintiff had filed a Motion for Stay Due to Gateway Insurance Company's Liquidation
6 ("Motion for Stay") (Doc. #56), which Defendants opposed (Doc. #57), and Defendants also
7 filed a Countermotion to Dismiss for Want of Prosecution ("Countermotion") (Doc. #58).

8 FRCP 41(a)(1) provides that a Plaintiff may dismiss an action without prejudice if it
9 files the notice of dismissal before an answer or motion for summary judgment is served or with
10 a stipulation of dismissal signed by all parties who have appeared. FRCP 41(a)(2) provides that
11 except as provided in Rule 41(a)(1), an action may be dismissed at plaintiff's request by court
12 order, "on terms that the court considers proper." The rule further states that "If a defendant has
13 pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action
14 may be dismissed over the defendant's objection only if the counterclaim can remain pending
15 for independent adjudication." Here, neither the defendants joining the motion nor Nellis Cab,
16 LLC has pleaded a counterclaim. Further, as noted above, a dismissal without prejudice will
17 not prejudice Nellis Cab, LLC in defending the claims brought against it in the underlying state
18 court action.

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1 Based on these facts Plaintiff hereby agreed to withdraw the Motion to Stay, Defendants
2 hereby agree to withdraw the Countermotion, and Plaintiff and Defendants jointly move the
3 dismiss the action without prejudice pursuant to FRCP 41(a)(2).

4 DATED this 18th day of September, 2020.

DATED this 18th day of September, 2020.

5 HUTCHISON & STEFFEN, PLLC

MAIER GUTIERREZ & ASSOCIATES

6
7 /s/ Todd W. Prall

8 Scott A. Flinders (6975)
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14 *Attorneys for Plaintiff*

/s/ Stephen G. Clough

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*Attorneys for Defendants Yendry
Hernandez-Echeverria, Gretsin
Consuegra Soriano, Juan Schueg-Castro,
and Jose Preto-Hernandez*

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17 IT IS SO ORDERED: September 18, 2020

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20 ANDREW P. GORDON
21 UNITED STATES DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 18th day of September, 2020, I caused the above and foregoing document entitled ***JOINT MOTION TO DISMISS CASE WITHOUT PREJUDICE PURSUANT TO FRCP 41(a)(2)*** to be served as follows:

☒ through CM/ECF and the court's electronic filing system

/s/ Bobbie Benitez
An employee of Hutchison & Steffen, PLLC